

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'D'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ **ITA No.1058/Ahd/2014**

निर्धारण वर्ष/ **Asstt. Year: 2009-10**

AND

ITA No.1091/Ahd/2015

Asstt.Year 2011-12

AND

ITA No.2986/Ahd/2015

Asstt.Year 2012-13

M/s.Diamond Crucible Company Ltd. 212-C, GIDC Estate Mehsana 384 002. PAN : AAACD 9917 E	Vs.	ACIT, Gandhinagar Cir., Gandhinagar.
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<i>अपीलार्थी/</i> (Appellant)	<i>प्रत्यर्थी/</i> (Respondent)
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Assessee by	:	Shri Sanjay R. Shah, AR
Revenue by	:	Shri Ranjan Kumar Singh, Sr.DR

सुनवाई की तारीख/ Date of Hearing : 08/01/2019

घोषणा की तारीख/ Date of Pronouncement: 10/01/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Present three appeals are directed at the instance of the assessee against separate orders of the Id.CIT(A) dated 16.12.2013, 9.1.2015 and 27.8.2015 passed for the Assessment Years 2009-10, 2011-12 and 2012-13 respectively.

2. Grounds of appeal taken by the assessee in all these years are not in consonance with Rule 8 of the Income Tax (Appellate Tribunal)

Rules, 1963, rather they are descriptive and argumentative in nature. Common grievance of the assessee in all these three years relates to disallowance of GBU service charges amounting to Rs.35,44,887/-, Rs.23,29,676/- and Rs.90,04,579/- in the Asstt.years 2009-10, 2011-12 and 2012-13 respectively. Apart from the above one issue, other issue relates to charging of interest under section 234B/C/D of the Income Tax Act, 1961.

3. The Id.counsel for the assessee at the very outset submitted that the only issue requires to be adjudicated is pertaining to admissibility of GBU service charges in all these three years, hence, as far as levy of interest under sections 234B/C/D is concerned, it is consequential.

4. It is pertinent to observe that facts on all vital points are common, therefore, for the facility of reference, we take up the facts mainly from the Asst.Year 2009-10.

5. Brief facts of the case are that the assessee-company at the relevant time was engaged in the business of manufacturing crucibles and its accessories. It is a subsidiary of Morgan Crucible Company PLC, U.K. It has filed its return of income for the Asstt.Year 2009-10 declaring total income at Rs.1,77,19,563/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) of the Act dated 24.9.2010 was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the AO that the assessee company made payments to its holding company i.e. Morgan Crucible Company PLC, U.K. viz. (a) management charges Rs.28,91,751/- and (b) GBU Charges of Rs.35,44,888/-. The Id.AO invited explanation of the assessee as to how these two expenditures are admissible to the assessee-company. In response to the query of the AO the assessee filed submission which has been considered by the AO. The Id.AO allowed management charges claimed by the assessee, but disallowed

GBU charges. The discussion made by the AO is worth to note. It reads as under:

"1. Global Business unit Service Charges (GBU Charges) are basically allotment of expenditure incurred by parent company Morgan Crucible Company pic to monitor' and supervise activities of group companies spread all over the world, amongst those companies.

These charges are billed by parent company on the basis of own working related to expenditure incurred. The GBU charges are also supported by agreement enclosed herewith.

Kindly note that GBU charges broadly include directors/other employees traveling expenses, their proportionate salary for time devoted for company activities, use of infrastructure for company activities etc.

The company has in all debited Rs.40.44 lacks towards GBU charges during the year out of which Rs.8 lacks is disallowed for non deduction of tax at source. Thus, monthly expense is worked out to Rs.3.37 lacks which in absence of foreign travelling expenses of directors, their proportionate salary and all other incidental expenditure for monitoring activities of company can be said to be quite reasonable and allowable."

4.1 . However from a careful analysis of the copies of the relevant agreement a very striking fact came to notice that practically there is no difference in the services allegedly obtained under the aforesaid two different agreements. This fact will be cigar .from the following chart where excerpt regarding the nature of services to be 'provided under the aforesaid two agreements have been reproduced in a juxtaposed manner :-

Management Charges (Excerpts from Page No.I of agreement dated 1.4.2006)	GBU Charges (Excerpts from Annexure-I agreement dated . .2008)
"Amongst the services which Morgan may provide are the following:- a. Training of personnel' in financial and/or accounting matters b. The provision of legal advice; c. The provision of marketing advice, either on a long-term basis (e.g. designing products and positioning products in the perceived markets of the future) or on a short-term basis (e.g. advertising, sales support, after-sales service): d. Strategic planning [long-term planning for the Company's trade in all respects) e. Policy matters (e.g. Policy towards research employment, buying and	Amongst the services- which the Providers may provide are the following: a. training of personnel in financial and/or accounting matters; b. the provision of legal advice; c. the provision of marketing advice, either on a long-term basis (e.g. designing products and positioning products in the perceived makers of the future) or on a short-term basis [e.g. advertising, sales support, after-sales service); d. strategies planning (long-term planning for the Company's trade in all respects); e. policy matters (e.g." Policy towards research, employment, buying and selling methods, training):

<i>selling methods, training):</i>	<i>f. public relations (e.g.</i>
<i>f. Public relations (e.g. Press/media relationships, lobbying, union matters, public standing);</i>	<i>Press/media relationships. Lobbying, union matters, public standing);</i>
<i>g. the provision of treasury and banking services and advice;</i>	<i>g. the 'provision of treasury and banking services and advice;</i>
<i>h. the provision of budgetary / financial assistance (e.g. Financial models, computer accounting, budgetary control, cost accounting};</i>	<i>h. the provision of budgetary/financial assistance (e.g. Financial models, computer accounting, budgetary control, cost accounting);</i>
<i>i. the 'provision of special investigation services (e.g. evaluation of new markets or of equipment/processes to be acquired;</i>	<i>i. the provision of special investigation services (e.g. evaluation of new markets or of .. equipment/process to be acquired);</i>
<i>j. the provision 'of taxation advice; and</i>	<i>j. the provision of taxation advice</i>
<i>k. any other service provided under this Agreement.</i>	<i>k. Health and safety related guidance and support</i>
	<i>l. support for human resources functions and strategies</i>
	<i>m. support for supply chain management and logistics operation;</i>

4.2 The above chart makes it obvious that except 3 services allegedly provided, under GBU Services charges, not even a word in these two separate agreement is different in respect of the nature of services said to be obtained by assessee company from its holding company in the relevant previous year, The three additional services mentioned in the GBU Service charges are also very general in nature for which a residuary clause was already provided in the agreement of Management Charges at point no. V. Copies of both these agreements are enclosed as Annexure 'A' and 'B' to this order.

4.3 The only conclusion which can be drawn after perusing the aforesaid chart is that assessee company inflated its expenses by debiting ' two different amounts of expenditure for same nature of services allegedly provided to it by its holding company i.e. MCC pic. It was an intentional act because despite already having an agreement for obtaining these services under the name Management Charges, a separate agreement was prepared for. alleged payment of GBU Charges with effect from 1.1.2008. Though in the circumstances of the case, there could not have been legitimate business need to do so. Obviously a colourable device had been adopted by the assessee company to gain fiscal advantage for itself under the guise of its internal management.

4.4 In this context it is pertinent to mention here that the agreement for payment of Global Business Unit Service Charges which has been claimed . to be made in the year 2008 does not show any specific date of its execution. It has also not

been made in a formal manner i.e. no witness has signed it nor it has been notarized either in India or in England. Thus this agreement is only a set of memo of internal correspondence between assessee and its holding company. Therefore, its authenticity about the date and time etc is not verifiable as it could have been changed at any point of time as per mutual consent of the assessee company and its holding company. It also needs to be mentioned here that in the course of assessment proceedings no evidence of any actual services rendered or any cost actually incurred by MCC plc for providing services as per the agreement of GBU Charges could be given except some self serving statements which are basically internal correspondence between assessee company and MCC plc."

6. On similar analogy, the Id.AO made disallowance of Rs.23,29,676/- and Rs.90,04,579/- in the Asstt.Year 2011-12 and 2012-13 . Appeal to the Id.CIT(A) did not bring any relief to the assessee.

7. Before us, the Id.counsel for the assessee submitted that basically, the Id.AO failed to appreciate the nature of expenses incurred by the assessee. GBU charges were paid in Asstt.Year 2007-08 and 2008-09 also. These have been accepted by the Revenue, though the assessments have been framed under section 143(1) of the Act without scrutinizing the record. He placed on record details compiled in chart showing GBU charges claimed by it in terms of percentage *qua* sales. Such charges vary in between 2.03% to 4.51% in the Asstt.Year 2007-08 to 2012-13. Thus, according to the Id.counsel for the assessee, the charges were not on higher side. He pointed out that basically the Id.AO failed to appreciate organizational structure of the parent company as well as the assessee. No doubt the assessee has been getting different types of services under the agreement for management charges. But some services were being broadly monitored at head office level and time devoted by main management for the operation in India is being charged to the assessee. Thus, he emphasised that it an hierarchical monitoring of all operations world-wide at global HO level. The elements of service rendered to the Indian subsidiary are being recognized at global HO level also, and for that charges are being calculated. To our query that what demonstrative

evidence assessee has produced showing nexus between management at global HO vis-à-vis operation in India, then the Id.counsel for the assessee submitted that though direct evidence could not be produced in the asstt.Year 2009-10, but an application for permission to place additional evidence in the Asstt.years 2011-12 and 2013-14 have been filed before the Tribunal, whereby copies of material showing correspondence and other relevant material sought to be placed on record. The Id.counsel for the assessee thereafter submitted that certain details showing how the expenditure are being recognized at global head office were produced before the AO. According to him, all these details are being maintained in a scientific manner and expenses are being recognized *qua* services to a particular subsidiary in a particular country.

8. On the other hand, the Id.DR submitted that in the Asstt.Year 2009-10 nothing was produced by the assessee. Onus was upon the assessee to demonstrate that these expenditure were incurred wholly and exclusively for the purpose of business, only then, they could be allowed to the assessee.

9. We have duly considered rival submissions and gone through the record carefully. It is pertinent to observe that in order to claim expenditure under section 37(1) of the Act, the assessee is required to fulfill certain conditions viz. (a) there must be an expenditure, (b) such expenditure must not be of the nature described in section 32 to 36, (c) the expenditure must not be in the nature of capital expenditure or personal expenditure of the assessee, and (d) expenditure must be laid out or expended wholly and exclusively for the purpose of business or profession. The expression "wholly" employed in section 37 refers to quantification of the expenditure, while expression "exclusively" refers to motive, objective and purpose of the expenditure. The stand of the assessee before the Revenue authorities was that management charges

and GBU charges are the expenditure incurred at two different platforms of organizational structure. The persons who are managing the affairs and to whom management charges are being paid were further under the control of global management head - they were being paid consultancy at the global HO level, and expenditure were calculated for the time spent *qua* the operation of independent subsidiary at global head. This organizational structure has not been appreciated properly, according to the assessee. We have perused the record and find that the assessee has submitted certain basic details showing how the expenditure are debited, and how agreement for global business units service charges are being worked out. It has failed to provide organizational tree of the parent company vis-à-vis subsidiary and how the consultancy and other services are being rendered to the subsidiary by the holding company. To our mind complete facts have not been brought on record either by the assessee or any investigation by the Revenue. The assessee is harping upon TP study report prepared by its tax consultant and submitted that such charges are being calculated at arm's length, which have not been doubted by the AO. We do not find any force in the contention of the assessee, because the AO has doubted the service provided to the subsidiary by the holding company at threshold. In other words, in the opinion of the AO, no such activities have been carried out by the parent company at global head for providing assistance to the assessee, and therefore, question whether these charges were calculated at arm's length or not, does not arise. Faced with the above situation, and keeping in view the application filed for adducing additional evidence in other two years, we deem it appropriate to set aside orders of the Id.CIT(A) in all these three years and remit this issue to the file of the AO for adjudication afresh. The Id.AO is required to examine organizational structure of the holding company vis-à-vis the assessee-company. The assessee has to demonstrate a nexus between consultancy and any other nature of services provided by the holding

company at the global head with some demonstrative evidence. In other words, it is to be demonstrated that certain services have been provided by the HO to the subsidiary for which expenditure have been worked at global HO level. If it is established that nexus is available, showing services rendered by the HO to the assessee-company, then Id.AO would look into ALP of the value of such services vis-à-vis the expenditure claimed by the assessee. The assessee will be at liberty to submit necessary details in order to establish its case.

10. It is needless to say that observation made by us hereinabove will not impair or injure the case of the AO nor any prejudice will cause be to defence/explanation of the assessee. The Id.AO shall decide this issue afresh in accordance with law. With the above observation, we allow all these appeals for statistical purpose.

11. In the result, all three appeals of the assessee are allowed for statistical purpose.

Order pronounced in the Court on 9th January, 2019 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER